

Decision on The Special Auditor for the Republika Srpska

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Considering the current situation as to the public budget in the Republika Srpska and paying attention to the fact that transparency in governmental behavior of spending public funds is not sufficiently established;

Bearing in mind that the Peace Implementation Council at its meeting in Brussels on 23/24 May 2000 urged measures for improved transparency in public budgets;

Bearing also in mind that the Peace Implementation Council at its meeting in Brussels on 23/24 May 2000 urged the High Representative to use his authority in accordance with his mandate to remove obstacles that stand in the way of economic reform and further stressed the need to create the conditions for self-sustaining market-driven economic growth to avoid an economic crisis as Bosnia and Herzegovina makes the transition from a donor dependent economy;

Noting that the public financial situation demands a safeguard of public funds;

Considering that harmonization between the work of the RS Supreme Audit Office and the Special Auditor’s office hereinafter referred to is in the general interest of transparency in the Republika Srpska and in the specific interest of the two aforementioned agencies;

Recognizing the close co-operation between the Supreme Audit Office and the International Community in the context of previous audits;

Noting the results of the afore-mentioned audits, which demonstrated a serious lack of financial transparency and accountability in the public sector;

Considering the enormous amount of work that needs to be done by the Supreme Audit Office with limited resources;

Believing that the appointment of a Special Auditor in the Republika Srpska will help accelerate the movement toward transparency and accountability in public financing and assist the Supreme Audit Office in its long-term goal of modernizing the financial and accounting practices in the Republika Srpska;

Having taken into account and considered the totality of the matters aforesaid, the High Representative hereby issues the following

Decision on

The Special Auditor for the Republika Srpska

Article 1

1. This Decision provides for the establishment and method of working of the Special Auditor for the Republika Srpska (hereinafter “Special Auditor”) over the public funds of the entity and

municipality institutions and companies, appointment of the Special Auditor, powers and responsibilities of the Special Auditor, types of auditing and submission of audit reports.

Article 2

1. In this Decision, the terms used have the following meaning:

- a) "Special Auditor or any authorized person" refers to the person appointed to this position by the High Representative or any authorized person appointed by the Special Auditor;
- b) "Institution" refers to all Institutions, Ministries, government agencies, extra-budgetary funds of the entity and municipalities of the Republika Srpska established by law;
- c) "Company" refers to any company:
 - 1) in which an Institution has a share-holding, regardless of the size of that share-holding; or
 - 2) which is funded by an Institution or has received a loan or grant from an Institution;
- d) "Auditee" refers to any Institution or Company, which is audited by the Special Auditor or any authorized person;
- e) "Premises" mean any building, office, land or site;
- f) "Information" means any material which communicates facts, opinions, data or any other matter, including any copy or portion thereof, regardless of physical form, characteristics, when it was created, or how it is classified. Such information includes, but it is not limited to:
 - 1) public accounts of an Institution;
 - 2) financial statements or reports of an Institution or a Company.

Article 3

- 1. Ms. Dale Ellen Ralph, is hereby appointed as Special Auditor for the Republika Sprska. Her position as such shall end as hereinafter determined by the High Representative.
- 2. The High Representative may remove the Special Auditor before the end of her term on the grounds of misbehavior or because the quality of her work fails to meet the standards determined in accordance with Article 5 of this Decision.
- 3. The Special Auditor may resign in writing in accordance with the terms of her appointment.
- 4. Should the Special Auditor cease to be able to hold her office, another Special Auditor may be appointed by the High Representative. The appointment shall be published in the Official Gazette of the Republika Srpska.

Article 4

- 1. The Special Auditor may appoint her staff to carry out her functions under this Decision.
- 2. The staff authorized to conduct the Special Auditor's functions under this Decision shall carry a letter of appointment.
- 3. The Special Auditor shall define the terms of employment of her staff.

Article 5

- 1. The Special Auditor or any authorized person may carry out audits to verify:
 - a) that all reasonable precautions have been taken by the Auditee to safeguard the collection and custody of revenues and that the law, instructions and directions relating thereto have been duly observed;
 - b) that the disbursement of revenues by the Auditee, including extra budgetary funds, has taken place under

the proper authority and for the purposes intended by the Auditee;

c) that all reasonable precautions have been taken by the Auditee to safeguard the receipt, custody, issue and proper use of public reserves, and that the instructions relating thereto have been duly observed.

Article 6

1. The Special Auditor or any authorized person:

- a) may, at all reasonable times, enter and remain on any premises occupied by the Auditee;
- b) is entitled to full and free access at all reasonable times to any information held by the Auditee, to any relevant information held by an Institution and to relevant former Payments Bureaus' records;
- c) is entitled to copy the information examined in the course of the audit;
- d) is entitled to be given answers to his or her written questions to the Auditee.

2. The Special Auditor or any authorized person shall produce his or her proof of authority, which shall consist of a proof of his or her appointment, upon request of the Auditee.

3. All authorities of the entity and municipalities of the Republika Srpska shall fully cooperate with the Special Auditor or her staff and comply with their instructions in accordance with this Decision.

4. The Supreme Audit Institution of BiH and the Supreme Audit Office of the Republika Srpska shall provide the Special Auditor with any assistance that she so requests in order to perform her duties, as set forth in this Decision, including, but not limited to, the provision of access to records, documents, files and other information.

Article 7

1. Pursuant to the previous Article, the Auditee shall furnish the Special Auditor with access to all contracts, records, documents and other information requested by the Special Auditor for the purpose of carrying out her duties under this Decision. In addition, the Special Auditor may direct the Auditee to release, and otherwise facilitate access to, all such information held by banks, enterprises or other third parties. The Special Auditor may also herself direct third parties to provide access to information for the purpose of carrying out her duties under this Decision.

2. In the event that the Auditee or a third party does not comply with the obligations listed in paragraph 1 of this Article, the Special Auditor may notify the relevant authorities, for the purpose of pursuing the notification and taking all necessary action in accordance with relevant Law in order to comply with the request of the Special Auditor. In such case, the Special Auditor shall also notify the Office of the High Representative.

3. The Auditee or third party may refuse to provide any information whose disclosure would reasonably be expected to cause substantial harm to current criminal proceedings.

4. Should the Auditee or third party refuse to provide any information in accordance with the third paragraph of this Article, the Auditee or third party, as appropriate, shall inform within three days in writing the Special Auditor or the authorized person of the criminal proceedings. In such case, the Special Auditor or the authorized person shall inform without delay the Office of the High Representative.

Article 8

1. With the exceptions of the audit report and the monthly report provided under Articles 9 and 10 of this Decision, the Special Auditor or any authorized person shall not disclose any information obtained in the course of performing any of his or her functions.

Article 9

1. The Special Auditor or any authorized person shall produce an audit report of any audit conducted in accordance with Article 5 of this Decision. Copies of the audit report shall be made available in English and in all official languages of the Republika Srpska to:
 - a) the Auditee;
 - b) the Republika Srpska Government and Republika Srpska National Assembly;
 - c) the Supreme Audit Office;
 - d) the High Representative.
2. Before submitting his or her audit report, the Special Auditor or any authorized person shall give a copy of the proposed audit report to the Auditee. If the Auditee gives written comments to the Special Auditor or any authorized person within 15 days after receiving the proposed report, the Special Auditor or any authorized person shall consider and include those comments before submitting the audit report.

Article 10

1. The Special Auditor or any authorized person shall provide the High Representative with a monthly report of activities.
2. Such report shall contain all relevant information on ongoing audits.

Article 11

1. The Special Auditor and all those persons authorized to work under her pursuant to the Decision of the High Representative herein, shall, notwithstanding the provisions of any local law or laws to the contrary, have full immunity for all time from all proceedings brought before any court whatsoever in respect of actions carried out under and by virtue of her mandate.

Article 12

1. This Decision, which is made pursuant to the international mandate bestowed upon the High Representative and which shall not be justiciable before any Court in Bosnia and Herzegovina, shall come into force forthwith and shall be published without delay in the Official Gazette of the Republika Srpska.

Sarajevo, 1 August 2002

*Paddy Ashdown,
High Representative*